

Appl. No. 10/602,371

Amendment Under 37 CFR 1.116 - Expedited dated November 19, 2004

Reply to Final Rejection of November 8, 2004

### **REMARKS/ARGUMENTS**

Entry of the foregoing amendment of claim 1 is respectfully requested as it is submitted not to raise any new issues that would require a further search. In the event the Examiner disagrees, entry of the amendment for purposes of appeal only is respectfully requested.

All of the remaining claims in the application, comprising claims 1-6 and 8-12 stand finally rejected under 35 USC 103(a) as being unpatentable over the '295 patent (previously cited) in view of the '169 patent (previously cited) or now in view of Finley et al. U.S. Patent No. 5,443,298 (newly cited) (the '298 patent). The Examiner's reasoning with respect to the combined teachings of the '295 and '169 patents is the same as set forth in the Office Action of August 11, 2004. The Examiner further reasons that the '298 patent discloses a carrier for carrying multiple containers comprising a substantially planar web having multiple annular supports for engaging the containers and a generally U-shaped handle 22 attached to the web at two points that are substantially equidistant from the centers of the multiple annular supports, and that therefore it would have been obvious to one of ordinary skill in the art to modify the handle of the '295 patent so that it is attached to the web at two points that are substantially equidistant from the centers of the multiple annular supports to facilitate carrying.

The Examiner has responded to applicant's argument set forth in the Amendment of August 30, 2004 by conceding that the '295 patent discloses two rather than one handle, but states that only one of the two U-shaped handles is being used to reject the claims as obvious.

The Examiner reasons that the omission of one handle and its function in a combination where the remaining elements perform the same function involves only routine skill in the art, citing *In re Karlson*, 136 USPQ 184 (CCPA 1963). With respect to the '169 patent, the Examiner responded to applicant's arguments by stating that that patent is relied upon only for its showing of a handle attached to the web at two points that are substantially equidistant from the centers of the multiple annular supports, and for nothing more.

The new obviousness rejection is respectfully traversed. Applicant reiterates and incorporates herein by reference the same arguments with respect to points of distinction from the '295 and '169 patents as set forth in the Amendment of August 30, 2004. In addition, applicant respectfully points out that the Examiner is in error in stating that the '295 patent discloses a plurality of radial slots, pointing to elements 6 and 9 in FIG. 1. The reason is that element 6 does not comprise a slot. See the definition of that word from the enclosed excerpt from *Webster's II New College Dictionary* (2001) as a "long narrow groove, opening or notch." Instead, element 6 is a roughly triangular-shaped opening that extends well beyond the radius of frames 30-32 and into bridging connections 36 that, together with the circular openings in collars 33-35, form keyhole shapes. Thus, the '295 patent merely discloses a single radial slot 9 in each of its split collars 33-35. This is respectfully submitted to be distinguishable from the plurality of radial slots that are provided in the flexible annular flanges of applicant's multiple annular supports, as claimed by applicant.

Moreover, claim 1 as instantly amended is further distinguishable from the '295 patent in that it recites but a single generally U-shaped handle that lies in the same plane as the

web and is flexibly attached to the web at two points on one edge of the web wherein the two points are substantially equidistant from the centers of the multiple annular supports. The '295 patent does not disclose or suggest a single U-shaped handle attached to the web at two points, but rather two U-shaped handles attached at eight points. The Examiner's reliance upon *In re Karlson* is respectfully submitted to be misplaced. This is because the removal of handle 38 from the carrier shown in FIG. 7 of the '295 patent would not allow the remaining elements to perform the same function as before, as was the case in the *Karlson* decision. Specifically, the '295 carrier is designed to carry bottles in an upright position. See column 2, lines 60-62. This can only be done when the two handles 37 and 38 are grasped and lifted so as to pivot upwardly 90° to the positions shown in phantom in FIG. 9 of the '295 patent. See column 2, lines 45-52. But removal of handle 38 will not permit the upright carrying function to take place; instead, if the carrier is grasped by a single handle 37 and lifted with bottles locked in the carrier, that handle, by virtue of its offset points of attachment to bridging connections 36 relative to the common axis of neck-engaging collars 33-35, cannot pivot upwardly 90° as shown in FIG. 9, and the bottles would not be oriented in an upright position, but would rather be oriented at an angle relative to upright.

Applicant respectfully submits that a more appropriate precedent is found in the case of *In re Gordon*, 221 USPQ 1125 (Fed Cir 1984), which held that if the proposed modification of the prior art invention would render it unsatisfactory for its intended purpose, then there can be no suggestion or motivation to make the proposed modification. Here, the Examiner's proposed modification of removing handle 38 would render the '295 carrier

unsatisfactory for its intended purpose of carrying bottles upright in a balanced position by the two handles 37 and 38.

The Examiner's attention is further directed to the decision in *In re Ratti*, 123 USPQ 349 (CCPA 1959), which held that if the proposed modification of the prior art invention would change its principle of operation, then the teachings of the prior art are not sufficient to render the claims *prima facie* obvious. Here again, the Examiner's proposed modification of removing handle 38 from the '295 carrier would change its principle of operation by not permitting handles 37 and 38 to pivot about 90° relative to the planar web portion 36 as shown in FIG. 9.

Finally, the newly cited '298 patent does appear to disclose U-shaped handle members attached on opposite lateral sides of the bottled neck-engaging annular supports that appear to be attached to the web at two points that are substantially equidistant from the centers of the multiple annular supports. But the Examiner may not disregard the fact that the '298 carrier is provided with two U-shaped handles, as opposed to one. Nor may the Examiner ignore the intended principle of operation of the two handles of the '298 carrier, i.e., that they are pivoted upwardly against each other to provide a single handle (column 3, lines 41-45). It is further respectfully submitted that the Examiner may not ignore the intended purpose of the '298 carrier, which is designed to carry the bottles in a vertically supported position (column 4, lines 12-16). Based upon the same arguments noted above in connection with the discussion of the *In re Karlson*, *In re Gordon* and *In re Ratti* cases, it would be improper for the Examiner to contend that one of the two U-shaped handles of the '298 carrier could be removed without making that

Appl. No. 10/602,371

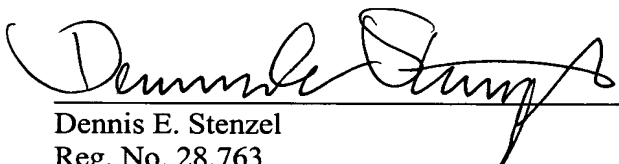
Amendment Under 37 CFR 1.116 - Expedited dated November 17, 2004

Reply to Final Rejection of November 8, 2004

carrier either unable to perform the same function as before (*In re Karlson*) or being modified so that it is unsatisfactory for its intended purpose (*In re Gordon*) or changing its principle of operation (*In re Ratti*).

For the reasons stated, early and favorable reconsideration is respectfully solicited.

Respectfully submitted,

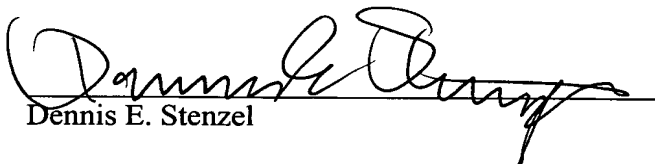


Dennis E. Stenzel  
Reg. No. 28,763  
Tel No.: (503) 227-5631

#### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Nov 19 104  
Date



Dennis E. Stenzel

# Webster's II

## *New College Dictionary*

2001



Houghton Mifflin Company

*Boston • New York*

BEST AVAILABLE COPY

**slipped disk** *n.* Herniation of an intervertebral disk resulting in back pain or sciatica.

**slip** (*slip* 'ər) *n.* A light, low shoe slipped on and off easily.

**slip-per-wort** (*slip* 'ər-wört', -wört') *n.* The calceolaria.

**slip-per-y** (*slip* 'ə-rē) *adj.* -**er**, -**i-est**. [Alteration of obs. *slipper*, *slippery* < ME < OE *slipor*.] 1. Causing or tending to cause sliding or slipping. 2. Tending to slip, as from one's grasp <a slippery bar of soap>. 3. Elusive; evasive. — **slip**'per-i-ly *adv.* — **slip**'per-i-

**ness** *n.*

**slippery elm** *n.* A tree, *Ulmus rubra* of eastern North America, having twigs and leaves with a mucilaginous, aromatic juice once used medicinally.

**slip ring** *n.* A metal ring mounted on a rotating machine part to provide a continuous electrical connection through brushes on stationary contacts.

**slip-sheet** (*slip* 'shēt') *n.* A blank sheet of paper slipped between newly printed sheets to prevent offsetting. — **vt.** -**sheet**-ed, -**sheet**-ing, -**sheets**. To insert blank sheets between (printed sheets).

**slip-shod** (*slip* 'shōd') *adj.* 1. Poorly made or done: CARELESS <slip-shod work>. 2. Slovenly; shabby.

**slip-slop** (*slip* 'slōp') *n.* [Redup. of *slop*.] 1. Trivial conversation or writing. 2. Archaic. Unappetizing liquid or watery food: *slops*.

**slip-stitch** (*slip* 'stich') *n.* A stitch used wherever stitching must be invisible on the right side of a garment, as on hems and facings, made by picking up one or two threads of fabric and then loosely catching the needle in the hem edge.

**slip-stream** (*slip* 'strēm') *n.* 1. The turbulent flow of air driven backward by the propeller or propellers of an aircraft. 2. The region of reduced air pressure and forward suction produced by and just behind a fast-moving ground vehicle. — **vi.** -**stream**-ed, -**stream**-ing, -**streams**. To drive in the slipstream of a ground vehicle.

**slip-up** (*slip* 'ŭp') *n.* Informal. An error or oversight.

**slip-way** (*slip* 'wā') *n.* A sloping incline leading down to the water on which ships are built or repaired.

**slit** (*slit* 'li:t') *n.* [ME *slitte*.] A long narrow cut, tear, or incision. — **vt.** -**slit**-ed, -**slit**-ing, -**slits**. 1. To make a long narrow incision in. 2. To cut lengthwise into strips: *split*.

**slither** (*slith* 'ər) *v.* -**ered**, -**er**-ing, -**ers**. [ME *slidren* < OE *slidrian*, freq. of *slidan*, to slide.] — **vi.** 1. To slip and slide, as on a loose or uneven surface. 2. To move sinuously. — **vt.** To cause to slither or glide. — **n.** A slithering movement. — **slith**'er-y *adj.*

\* **syns**: SLITHER, SNAKE, UNULATE *v.* core meaning: to move sinuously <A large worm slithered through the grass>.

**slit trench** *n.* A narrow, shallow trench dug during combat for the protection of a single soldier or a small group.

**sliver** (*sliv* 'ər) *n.* [ME *slifere* < *sliven*, to split.] 1. A slender piece cut, split, or broken off: *splinter*. 2. A small, narrow piece or portion <a sliver of land along the river>. 3. (also *sliv* 'var). A continuous strand of loose wool, flax, or cotton, ready for drawing and twisting. — **vt.** *sliver*. To split or become split into slivers.

**sliv-o-vitz** (*sliv* 'ə-vits') *n.* [Serbo-Croatian *sljivovica* < *sljiva*, plum.] A dry, colorless plum brandy.

**slob** (*slob* 'n') [Ir. Gael. *slab*, mud.] Informal. An obnoxious, crude, or slovenly person.

**slob-ber** (*slob* 'ər) *v.* -**ber**-ed, -**ber**-ing, -**bers**. [ME *sloberen*.] — **vi.** 1. To allow saliva to dribble from the mouth: *saliver*. 2. To spill (liquid or food) from the mouth while eating or drinking. 3. To indulge in mawkish, sentimental expression. — **vt.** To wet or smear with or as if with saliva or food dribbled from the mouth. — **n.** 1. Saliva or liquid running from the mouth. 2. Mawkish, sentimental expression: *drivel*. — **slob**'ber-er *n.* — **slob**'ber-y *adj.*

**sloe** (*slo* 'n') [ME *sloo* < OE *slā*.] 1. The blackthorn. 2. The tart, blue-black, plumlike fruit of the sloe.

**sloe-eyed** (*slo* 'id') *adj.* Having slanted eyes.

**sloe gin** *n.* A liqueur having a gin base, flavored with fresh sloes.

**slog** (*slog* 'n') *v.* **slogged**, **slog**-ging, **slogs**. [Orig. unknown.] — **vt.** To strike with heavy blows, as in boxing. — **vi.** 1. To walk with a slow, plodding gait. 2. To work diligently for long hours. — **n.** 1. Long hard work. 2. A long exhausting march. — **slog**'ger *n.*

**slo-gan** (*slo* 'gan') *n.* [Sc. *slogorne*, battle cry < Gael. *sluagh*-ghairm: *sluagh*, host + *ghairm*, shout.] 1. A phrase expressing the aims or nature of an enterprise or organization: *motto*. 2. A battle cry of the Scottish clans. 3. A catch phrase used in advertising or promotion.

**slo-gan-er** (*slo* 'ga-nēr') *n.* One that invents or uses slogans.

— **slo**'gan-er' *v.* (-**ered**, -**er**-ing, -**ers**).

**slo-gan-ize** (*slo* 'ga-nīz') *vt.* -**ized**, -**iz**-ing, -**iz**-es. To express in the form of slogans.

**sloop** (*sloop* 'n') [Du. *sloop*.] Naut. A single-masted, fore-and-aft-rigged sailing boat with a short standing bowsprit or none at all and a single headsail set from the forestay.

**sloop of war** *n.* A small armed vessel larger than a gunboat, carrying guns on one deck only.

**slop** (*slop* 'n') [ME *sloppe*, a muddy place.] 1. Spilled or splashed liq-

uid. 2. Soft slush or mud. 3. Unappetizing watery food. 4. *often slops*. Waste food used to feed pigs or other animals: *swill*. 5. *often slops*. Mash remaining after the process of alcohol distillation. 6. *often slops*. Human excrement. 7. Repulsively effusive expression. — **v.**

**slopped**, **slop**-ping, **slops**. — **vi.** 1. To spill or splash, as a liquid. 2. To spill over. 3. To gush with excessive sentimentality. 4. To plod or tramp awkwardly as if walking through mud. — **vt.** 1. To spill (liquid). 2. To spill liquid upon. 3. To dish out or serve unappetizingly or clumsily. 4. To feed slops to (animals).

**slop** (*slop* 'n') [ME *sloppe*, a kind of garment.] 1. *slops*. Garments and bedding issued to sailors from a ship's stores. 2. *slops*. Short, full trousers or breeches worn in the 16th cent. 3. A loose outer garment, as a smock or overalls. 4. *slops*. Chiefly Brit. Cheap ready-made garments.

**slope** (*slop* 'n') *v.* **sloped**, **slop**-ing, **slopes**. [*<* ME *slope*, *sloping*.] — **vi.** 1. To incline upward or downward. 2. To ascend or descend on a slanting course. — **vt.** To cause to slope. — **n.** 1. An inclined line, a surface, plane, position, or direction. 2. A stretch of ground forming a natural or artificial incline <ski slopes>. 3. A deviation from the horizontal: *b*. The amount or degree of deviation from the horizontal. 4. *Math*. The rate at which an ordinate of a point of a line on a coordinate plane changes with respect to a change in the abscissa. 5. *Math*. The slope of the line tangent to a plane curve at a given point. — **slop**'er

— **slop**'ing-ly *adv.*

**slo-pitch** (*slo* 'pich') *n.* var. of *SLOW-PITCH*.

**sloppy** (*slop* 'ē) *adj.* -**pi**-er, -**pi**-est. 1. Of, like, or covered with slop: *muddy* <sloppy ground>. 2. Watery and unappetizing <a sloppy stew>. 3. Spotted or splashed with liquid or slop. 4. Informal. Untidy: *messy* <a sloppy room>. 5. Informal. *slipshod*. 6. Informal. Over-sentimental: *gushy*. — **slop**'pi-ly *adv.* — **slop**'pi-ness *n.*

**sloppy joe** (*jō*) *n.* Ground cooked meat in a usu. spicy sauce served on a bun.

**slosh** (*slōsh* 'n') *v.* **slashed**, **slosh**-ing, **slosh**-es. [Alteration of *slush*.] — **vt.** 1. To stir or splash (a liquid). 2. To agitate in a liquid <slush clothes in bleach>. — **vi.** To splash or flounder in a liquid, as water. — **n.** 1. Slush. 2. The sound of splashing liquid. — **slosh**'y

*adj.*

**slashed** (*slōsh* 't') *adj.* [*<* p.part. of *slosh*.] Slang. Drunk.

**slot** (*slōt* 'n') [ME, indentation running down the middle of the breast < OFr. *esclot*.] 1. A long narrow groove, opening, or notch, as for receiving coins in a vending machine. 2. A gap between a main and an auxiliary airfoil to provide space for airflow and facilitate the smooth passage of air over the wing. 3. Informal. A suitable position or niche.

— **vt.** **slot**-ted, **slot**-ting, **slots**. 1. To cut or make a slot or slots in. 2. Informal. To put into or assign to a slot.

**slot<sup>2</sup>** (*slōt* 'n') [OFr. *esclot*, horse's hoofprint, perh. < ON *slōð*, track.] The trail of an animal, esp. a deer.

**slot car** *n.* An electric toy racing car that fits into a slotted track and is controlled by a rheostat held by the operator.

**sloth** (*slōth*, *slōth*, *slōth*) *n.* [ME *slowth* < *slow*, *slow* < OE *slāw*.] 1. Aversion to exertion or work: LAZINESS. 2. A slow-moving arboreal mammal of the family *Bradypodidae* of tropical America, esp. a member of the genus *Bradypus*, having three long-clawed toes on each foot: *b*. A member of the genus *Choloepus*, having two toes on the forefoot and three on the hind foot. 3. A company of bears.

**sloth bear** *n.* A bear, *Melursus ursinus* of south-central Asia, having a long snout and dark shaggy hair.

**sloth-ful** (*slōth* 'fəl, slōth', slōth'-) *adj.* Lazy. — **sloth**'ful-ly

*adv.* — **sloth**'ful-ness *n.*

**slot machine** *n.* A vending or gambling machine operated by the insertion of coins into a slot.

**slot racing** *n.* The game of racing slot cars. — **slot racer** *n.*

**slouch** (*slouch* 'n') *v.* **slouched**, **slouch**-ing, **slouch**-es. [Orig. unknown.] — **vi.** 1. To sit, stand, or walk with an awkward, drooping posture. 2. To droop or hang carelessly, as a hat. — **vt.** To cause to droop. — **n.** 1. A drooping posture. 2. An awkward, lazy, or inept person. — **slouch**'i-ly *adv.* — **slouch**'i-ness *n.* — **slouch**'y *adj.*

**slouch hat** *n.* A soft hat with a broad flexible brim.

**slough** (*slōō*, *slou*) *also* **slew** (*slōō*) *n.* [ME *slughe* < OE *slōh*.] 1. A depression or hollow, usu. filled with deep mud or mire. 2. *also* **slue**. A stagnant swamp, marsh, bog, or pond, esp. as part of a bayou, inlet, or backwater. 3. Deep despair or moral degradation.

**slough<sup>2</sup>** (*slūf*) *n.* [ME *slughe*.] 1. The dead outer skin shed by a snake or amphibian. 2. Med. Dead tissue separated from a living structure. 3. An outer layer or covering that is shed. — **v.** **sloughed**, **slough**-ing, **sloughs**. — **vi.** 1. To be cast off or shed. 2. To shed a slough. 3. Med. To separate from surrounding tissue. — Used of dead tissue: *Med.* To discard as undesirable. — **slough**'y *adj.*

**Slo-vak** (*slō* 'vāk', -vāk') *also* **Slo**-va-ki-an (*slō*-vā'kē-an, -vāk'ē-an) *n.* [Slovak *Slovák*.] 1. A member of a Slavic people living in Slovakia. 2. The Slavic language of the Slovaks. — *adj.* Of or relating to Slovakia, the Slovaks, or their language.

**sloven** (*slāv* 'ən) *n.* [ME *sloveyn*.] A slovenly person.

**Slo-vene** (*slō* 'vən') *n.* 1. A native or inhabitant of Slovenia. 2. The Slavic language of Slovenia. — **Slo**'vene' *adj.*

**sloven-ly** (*slū* 'vən-lē) *adj.* Careless in personal appearance or work. — **sloven**'ly *adv.*

**slow** (*slō* 'n') *adj.* -**er**, -**est**. [ME < OE *slāw*.] 1. a. Not moving or ca-

oo boot ou out th thin th this ū cut ūr urge y young  
yō abuse zh vision ə about, item, edible, gallop, circus